

Chapter 35 TREES, SHRUBS AND WEEDS*

Cross references: Erosion and siltation control, Ch. 9; fire prevention, Ch. 11; garbage and trash, Ch. 13; health and sanitation, Ch. 14.

State law references: Destruction of trees and shrubs, Code of Va., §§ 18.2-139, 18.2-140.

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ARTICLE I. IN GENERAL

Sec. 35-1. Purpose of chapter.

It is the purpose and intent of the city to regulate the removal of trees from public and private property in the city in order to preserve, protect and enhance valuable natural resources entrusted to the state and to protect the health, safety and welfare of its citizens, to establish standards limiting the removal of and insuring the replacement of trees sufficient to safeguard the ecological and aesthetic environment necessary to a community; to prevent the unnecessary clearing and disturbing of land so as to preserve, insofar as is practicable, the natural and existing growth of vegetation; and to replace when feasible the removed trees with the same, comparable, or improved species; and to provide protective regulations against hazardous trees and diseased trees or shrubs, and the growth of weeds and brush; to control activities relative to trees and plantings upon the streets or public property of the city; to establish a permit procedure for tree contractors; and to provide for a tree commission.

(Ord. No. 811)

Sec. 35-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Arborist: A person trained in arboriculture, forestry, horticulture and/or landscape architecture in the employ of or under contract to the city duly appointed by the city manager and primarily charged with the responsibility of enforcing the provisions of this chapter.

Covered area: That area which falls within the drip line of any tree, a vertical line extending from the outermost portion of the canopy to the ground.

Destroy: To cut down a tree or to perpetrate any intentional or negligent act which will cause a tree to decline or die within a period of two (2) years. This shall include, but not be limited to, damage inflicted upon the root system of a tree by the application of toxic substances, by the operation of equipment and vehicles, or by the change of natural grade by unapproved excavation or filling within the covered area of a tree, or damage caused by the unapproved alteration of natural physical conditions.

Development: Any alteration of the natural environment of improved and unimproved real estate which requires the application and approval of a site plan, subdivision plat or development plan related to regulated land disturbance activities and/or requiring permits, including, but not limited to, demolition, grading, filling, excavation and building.

Historic tree: A tree which has been determined by the city council to be of notable historic interest because of its age, size or historic association and has been so designated in the official records of the city.

Redevelopment: The process of developing land that is or has been previously developed.

Specimen tree: A tree which has been determined by the city council to be of high value because of its type, size, age or other professional criteria and has been so designated in the official records of the city.

Street tree: Any tree which has been individually designated by the local governing body and which grows in the street right-of-way or on private property as authorized by the owner and placed or planted there by the local government.

Tree: Any self-supporting woody plant growing upon the earth which usually provides one main trunk and produces a more or less distinct and elevated head with many branches.

(a) For preservation purposes, a tree shall measure no less than two (2) inches in diameter at six (6) inches above the ground level.

(b) Replacement trees shall measure no less than two (2) inches in diameter at six (6) inches above the ground level. Therefore, the minimum size to be specified on the planting plan shall be two (2) to two and one-half (2 1/2) inch caliper as specified in the latest edition of the American Association of Nurserymen, "American Standard for Nursery Stock," except as permitted in the public facilities manual.

Tree replacement plan: A plan indicating the location, size, quantity, common and botanical name, and type of nursery stock (B & B, BR or container) of replacement trees. (Ord. No. 811; Ord. No. 1704, 5-14-01)

Sec. 35-3. Removal or treatment of trees or shrubbery on private grounds.

(a) The arborist, except in the event of an emergency, shall, in carrying out his duties outlined in subsections (b), (c) and (d) of this section, contact the property owner by writing his last known address, describing the conditions and stating the control necessary for correction and establishing a reasonable time within which the required steps shall be taken on a voluntary basis.

(b) The arborist, under the grant of power to municipalities in the state code, may cause or order to be removed any tree or part thereof on private ground which is in unsafe condition, or which by reason of its nature is injurious to sewer or other public improvements, or is affected with any injurious fungus, insect or other pest.

(c) The arborist shall also have power to enter upon any private grounds in the city and to spray or otherwise treat or cause or order to be sprayed or otherwise treated any tree or shrub infected or infested by any parasite, insect or pest, when it shall be necessary in his opinion to do so, to prevent the breeding or scattering of any parasite, and to prevent danger therefrom to person or property or to trees and shrubs planted in the public streets or other public places.

(d) Whenever in the opinion of the arborist, trimming, pruning, removal or treatment of any such tree or shrub located on private grounds shall be deemed prudent and necessary and consistent with the standards of the International Society of Arboriculture as outlined in the American National Standards Institute A3000 and Z133.1 Standards, the arborist shall have the power to trim, treat or remove any such tree or shrub, or cause or order the same to be done.

(e) If the required steps are not taken within the specified time, the arborist shall cause or order the same to be done and shall assess the cost thereof to the owner of the property.

(Ord. No. 811; Ord. No. 1659, 10-25-99)

Sec. 35-4. Regulation of growth of weeds and brush.

(a) It shall be unlawful for the owner of any vacant lots or developed lots within the corporate limits of the city to permit any weeds or brush whatsoever to grow to a height greater than twelve (12) inches.

(b) Whenever weeds or brush on any vacant lots or developed lots within the corporate limits of the city exceed twelve (12) inches in height, as prohibited by the preceding subsection, the city manager or designee shall notify the owner of such

property to remove such weeds, brush or plant life within seven (7) days from the receipt of such notice.

(c) The notice required by subsection (b) of this section shall be given in person, by telephone or by ordinary mail. In the event the property owner, or his authorized agent, cannot be located after a reasonable search by the city manager or designee, no notice shall be required.

(d) If such weeds or brush are not removed within the required seven-day period the city manager or designee shall cause them to be removed and the cost thereof shall be assessed against the owner of such property.

(e) The assessment provided for in subsection (e) of section 35-3 and subsection (d) of this section shall constitute a lien on such property. Such lien shall be promptly recorded in the property records of the county, and such lien and the cost of its recording shall be collected in the same manner as tax liens.

(Ord. No. 81; Ord. No. 1513, 5-22-95)

State law references: Authority of city to regulate the removal of weeds, Code of Va., § 15.1-11.

Sec. 35-5. Activities of public utilities.

The authority of the arborist shall extend to the control of the activities of utility companies in the matter of treating, trimming, planting or removing trees or shrubs on the public grounds and streets of the city.

It shall be unlawful for any such company to in any manner treat, trim, plant or remove trees or shrubs on any property, grounds or streets of the city without the written permission of the arborist, who is hereby expressly given the right to withdraw any permission where inspection by the arborist indicates that the work has not been or is not being done in compliance with good horticultural standards.

(Ord. No. 811)

Cross references: Public utilities, Ch. 29; underground utilities, Ch. 36.

Sec. 35-6. Plantings along streets and public use easements.

(a) The planting, pruning or other treatment of trees upon the streets and public use easements shall be under the direction of the arborist. No tree upon any street or public use easement in the city shall be destroyed, cut down or otherwise removed without the consent of the arborist. No trees or plants of any kind shall be planted upon any street, public use easement or public property except with the consent of the arborist.

(b) No trees shall be planted at public expense upon private property unless a public use easement has been granted; except, that, with the consent of the owner, trees may be planted upon the line between any street and the abutting private property, and trees may be planted in connection with public works projects which have disturbed private property and where the city has easements, on condition that the planting, pruning, removal or other treatment of the trees so planted shall be under the control of the arborist.

(c) It shall be unlawful to girdle, break, bend, wound, tack signs or notices upon or in any manner injure any tree planted upon any public use easement or street or on the line thereof within the corporate limits, except with the approval of the arborist.

(Ord. No. 811)

Cross references: Streets and sidewalks, Ch. 32.

Sec. 35-7. Tree contractors.

- (a) In addition to any other license or permit which may be required by this Code, any person who shall solicit or otherwise seek to engage in the business of tree maintenance and preservation by pruning or fertilizing or of tree removal, in whole or in part, shall be required to obtain a permit from the city arborist.
 - (b) The permit shall be applied for in the office of the city arborist on forms prescribed by the city arborist and shall contain information as required by him as to reasonably protect the consumer and to assure the qualifications of the person proposing to perform the services.
 - (c) Every applicant shall file with the arborist a surety bond running to the city in the amount of one thousand dollars (\$1,000.00) with a corporate surety licensed to do business in the state, conditioned that the applicant shall fully comply with all provisions of this chapter and other ordinances of the city and statutes of the state, and guaranteeing to any person of the city that all money paid shall be accounted for and applied according to the representations of the contractor and that the contractor shall complete the agreed tasks in a workmanlike manner.
 - (d) Every applicant shall file evidence of possession of workers compensation and liability insurance in the minimum amounts of one million dollars (\$1,000,000.00) for bodily injury or death and one hundred thousand dollars (\$100,000.00) for property damage indemnifying the city or any person injured or damaged resulting from the pursuit of such endeavor as herein described.
 - (e) Persons within the purview of this article shall pay a permit fee of twenty-five dollars (\$25.00) annually, which permit may be renewed at the end of a calendar year after first being obtained.
 - (f) Unless, upon an investigation, the character and business responsibility of the applicant is found to be unsatisfactory or incompatible with the purposes of this article, the city arborist shall within ten (10) days issue such permit containing the information by attachment contained in the application provided the security required shall have been furnished. A seventy-two-hour temporary permit may be issued in the sound discretion of the city arborist.
- (Ord. No. 811; Ord. No. 1659, 10-25-99)

Sec. 35-8. Tree commission.

- (a) A tree commission is hereby established. The commission shall be composed of five (5) commissioners appointed by the city council from among the eligible voters resident in the city and such ex officio members as may be designated by the council. The commissioners shall serve for terms of three (3) years; however, of those initially appointed, two (2) shall serve for three (3) years, two (2) shall serve for two (2) years, and one (1) shall serve for one (1) year. Upon the expiration of a term of office, the commissioner holding that office may continue to serve until a successor shall be qualified. Any vacancy shall be filled for the unexpired term in the manner in which commissioners are regularly chosen.
- (b) The chairman and vice-chairman of the tree commission shall be elected by the commissioners from among themselves within two (2) months following the annual installation of new full-term commissioners.
- (c) The tree commission shall perform the following duties:
 - (1) The commission shall advise the city manager regarding rules and regulations promulgated under this chapter and shall assist the arborist in the performance of his duties.

- (2) The commission shall recommend to the city council any legislation, plans, policies and programs complementary to the intent and purpose of this chapter.
 - (d) The tree commission shall:
 - (1) Establish its own bylaws and rules of procedure consistent with the state code, city Charter, and the City Code;
 - (2) Meet in regular sessions, open to the public, on dates established by the commission and in special sessions as necessary;
 - (3) Post with the city clerk notices of all meetings and provide agendas which shall be available to the public at least three (3) days prior to meetings, except in cases of emergency;
 - (4) Maintain and file with the city clerk approved minutes of their meetings; and
 - (5) Follow, unless otherwise provided, the general requirements for citizen boards, commissions and committees of the city, as set forth in Chapter 2 of this Code.
- (Ord. No. 811)

Sec. 35-9. Historic or specimen trees.

- (a) The tree commission may recommend to the city council that certain trees located within the city be officially designated as historic or specimen trees. Prior to such recommendation, the tree commission shall obtain the comments and recommendations of the arborist and shall notify the owner of property on which the tree is located. The tree commission shall present its recommendation to the city council for determination, considering the reports of the arborist and the tree commission. The city council shall hold a public hearing prior to officially designating any historic or specimen trees. The initial action on such a procedure may be taken by a citizen, citizen's group, or organization by submitting a complete report to the tree commission describing the tree or trees in question and their significance in needing protection.
 - (b) In the event that the application of this chapter regulating the removal of heritage, specimen, memorial or street trees results in any taking of private property for a public purpose or use, the city shall compensate by fee or other consideration the property owner for such taking, to the extent that such claim is recognized and compensable under state or federal law, and shall notify the owner of his right to seek such fee or compensation.
- (Ord. No. 811; Ord. No. 1704, 5-14-01)

Sec. 35-10. Violations and penalties; remedies.

Any person, whether as an owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this chapter or permits any such violation or fails to comply with any of the requirements, or who erects any building or who uses any building or any land in violation of any detailed statement of plan submitted by him and approved under the provision of this chapter shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. Each day upon which such violation continues shall constitute a separate violation. Furthermore the arborist, through the city attorney, may apply to the circuit court of the county for injunctive relief to enjoin a violation or a threatened violation of this chapter, it being determined that vegetation in general and trees in particular are unique and thus a proper subject of equitable relief.

(Ord. No. 811; Ord. No. 1704, 5-14-01)

ARTICLE II. TREE REMOVAL

Sec. 35-11. Applicability of article.

The terms and provisions of this article shall apply to real property in the city as follows:

- (a) All undeveloped property and property undergoing redevelopment.
- (b) Yard area of all developed property except residential property zoned R-1A and R-1B; provided, that the covered area of historic and specimen trees shall be covered by the terms of this article.
- (c) Covered area of historic or specimen trees.
- (d) Public rights-of-way, parks and public grounds.

(Ord. No. 811)

Sec. 35-12. Permit--Required.

A tree removal permit shall be required before any tree on property described in section 35-11 may be destroyed or removed.

(a) When a site plan or other development plan is required, application for a tree removal permit shall consist of a plan acceptable to the arborist in form and content, submitted as part of the site plan or other development plan. The arborist shall determine the plan's compliance with the requirements of the city as promulgated in a public facilities manual. No plan shall be approved which does not comply with these requirements.

(b) When no site plan or other development plan is required, application for a tree removal permit shall be submitted to the arborist in a form which provides the information deemed necessary by the arborist. Where no emergency exists, the arborist shall act upon a tree removal permit application within eight (8) days from receipt of application.

(Ord. No. 811; Ord. No. 1236, 9-13-88)

Cross references: Licenses, Ch. 18.

Sec. 35-13. Same--Review and issuance.

(a) Factors to consider. In addition to reviewing for conformance to standards and guidelines contained in the public facilities manual, the following factors shall also be taken into consideration:

- (1) The extent to which tree clearing is shown to avoid excessive clearing and still permit the applicant to achieve the proposed development or land use.
- (2) The extent to which the actual or intended use of the property is in accordance with the regulations of the zoning district in which the property lies requires clearing of trees.
- (3) The hardship to the applicant which will result from a modification or rejection of the required permit.
- (4) The desirability of preserving any tree by reason of its size, age or some other outstanding quality, such as uniqueness, rarity or status as a landmark or species specimen.
- (5) The extent to which the area would be subject to environmental degradation due to removal of the trees.
- (6) The heightened desirability of preserving tree cover in densely developed or densely populated areas.

(7) Whether the tree is diseased, injured beyond restoration, in danger of falling, interferes with utility services or creates unsafe visual clearance.

(b) Replacement of trees. When warranted in the judgment of the arborist, the applicant may be required to replace, in accordance with a tree replacement plan, any tree being removed with a suitable replacement tree elsewhere on the site. In determining whether the replacement of trees is reasonable and shall be required, the arborist shall consider the intended use of the property together with an evaluation of the following:

- (1) Existing tree coverage, size and type;
- (2) Number of trees to be removed;
- (3) Area to be covered with structures, parking and driveways;
- (4) Grading plan and drainage requirements; and
- (5) Character of the site and its environs.

(c) Approval. If the permit application conforms to standards and guidelines and there are no objections resulting from consideration of the factors listed in subsection (a) of this section, the permit application shall be approved.

(d) Rejection. If the permit application does not conform to standards and guidelines or there is an objection resulting from consideration of the factors listed in subsection (a) of this section, the permit application shall be rejected. The arborist may require that the application be modified to bring it into conformance with the standards and guidelines or to eliminate any objections to the application.

(Ord. No. 811)

Sec. 35-14. Area to be cleared.

The area of land to be cleared of trees and other vegetation in conjunction with proposed development or land use shall not include any trees which are unique by reason of size, age or some other outstanding quality, such as rarity or status as a landmark or species specimen. Subject to the arborist's approval, the area to be cleared shall generally be limited to that area needed for:

- (a) Street construction and necessary slope construction.
- (b) Public service or utility easements and rights-of-way. This shall include area for utility line installation with any construction easements necessary for such installation and easements for maintenance access. These easements shall not be cleared prior to actual line installation.
- (c) Building roof coverage area and ancillary structures such as patios and porches plus fifteen (15) feet on all sides for construction activity.
- (d) Driveways, alleyways, walkways, parking lots and other land area necessary to the installation of the proposed development or use.
- (e) Sediment basins. Only those trees within the area necessary for construction of the dam, the area in which sediment will collect, and the area necessary for construction and maintenance of the basin shall be cleared of trees.

(Ord. No. 811)

Sec. 35-15. Tree preservation and maintenance agreement and bond.

(a) Purpose and amount of bond. Prior to approval of the plan required by this article and prior to the issuance of building and development permits there shall be executed by the owner or his agent and submitted with the plans an agreement to establish the measures provided for on the plans for the protection of existing trees, together with a cash bond, to be deposited in an interest bearing escrow account upon which the city may draw, in accordance with the agreement, in an amount equal to the total replacement cost

of the protected trees plus the cost of the measures required by the agreement for the protection of the trees. Deposit of such funds shall be in a qualified security or insured savings account and any interest earned shall be credited to the owner or agent. The agreement and bond shall be provided for the installation, maintenance and performance of these protective measures and to insure the repair and replacement, if necessary, of the protected existing trees.

(1) Time, amount of bond fixed, and standard for fixing amount. The replacement cost of the protected trees shall be fixed at the time the agreement is executed and shall be based upon the most recent Guide for Plant Appraisal prepared by the Council of Tree and Landscape Appraisers. In fixing the replacement cost of any existing tree, the city shall use the cost of a specimen tree of similar kind which is available from a nursery in the region and which is closest in trunk diameter to the existing tree. The replacement cost shall include the nursery's cost to install and guarantee the replacement tree for one year. The cost of the measures required for the protection of the trees shall also be fixed as of the time the agreement is executed and shall be based upon the standards for protective measures as set out in the most recent Virginia Erosion and Sediment Control Handbook ("Handbook"), prepared by the Virginia Soil and Water Conservation Commission. (Chapter 3, STD & SPEC 3.38). Protective measures may include those items set out in the Handbook, as well as fertilization, disease and insect treatments and pruning.

(2) Other forms of security allowed. In the event the amount of the bond is fixed in excess of two thousand dollars (\$2,000.00), a surety bond, letter of credit, certified check or other similar forms may be provided in lieu of cash bond for the amount in excess of two thousand dollars (\$2,000.00) if the particular form is approved by the city attorney.

(b) Procedure for administration of bond and terms of bond. The agreement and the plan shall describe the kind of measures to be taken and the materials to be used to protect the trees from the stress of construction. The owner or his agent shall notify the city arborist in writing at least three (3) days prior to the installation of the protective measures. The arborist shall then inspect the measures after they are installed to insure that they meet the requirements set out in the agreement. The arborist shall notify the owner or his agent in writing when the inspection is complete as to whether or not compliance has been achieved. No construction activities, which include, but are not limited to, the placement of heavy equipment on the site, excavations, earth movement, or erection of any structures, shall be done by the owner or his agent until the arborist has determined that the measures have been installed according to the agreement. These measures shall remain in place and shall not be modified until all construction on the real estate covered by the agreement is completed. The arborist shall inspect the area for compliance from time to time. The agreement may be amended only by a written instrument and only upon the consent of the arborist.

The owner or his agent shall notify the arborist in writing when all construction on the real estate covered by the agreement is completed. The arborist shall then inspect the area and, upon determining that all construction in that area is completed, the arborist shall notify the owner or his agent in writing that the protective measures may be removed. No additional construction shall take place on the real estate subject to the agreement after the protective measures have been removed unless the written approval of the arborist is obtained. Approval shall be given upon a determination that the construction will not damage the protected trees. The arborist shall also inspect the trees at this time to determine what damage, if any, has been caused by the "stress of construction" as that term is defined in the Handbook in the subsection entitled "Stresses of Construction." The arborist shall also notify the owner or his agent in writing if any trees must be repaired or replaced because of damage caused by the stress of the construction or shall refund half

of the bond if no repairs or replacements are needed. Upon notification by the arborist that repairs or replacements are to be made, the owner or his agent shall make the required repairs and replacements and shall notify the arborist when the repairs and replacements are complete. The arborist shall inspect the repairs and replacement and shall notify the owner when it is determined that the required repairs and replacements have been adequately performed. One-half (1/2) of the bond shall then be refunded. The remaining one-half (1/2) of the bond shall be held for a period of two (2) years from the date of the arborist's notification to the owner that the required repairs or replacement have been completed. The purpose of retaining this portion of the bond is to insure that trees which are damaged by construction, but where the injury becomes apparent only after construction is completed, will be repaired or replaced. At the end of this two-year period, the owner or his agent may apply to the city arborist in writing for a discharge of the unexpended or unobligated portion of such bond. If the protected trees have survived in good health based upon the guidelines set out in the Handbook in the section entitled "Tree Preservation and Protection" the arborist shall release the bond within thirty (30) days of receipt of the application. The bond shall not be discharged until all required repairs and replacements have been made.

If the owner or his agent refuses to comply with the requirements of the arborist as made pursuant to section 35-15(b), the city may, at its option, have the work performed by others or by its own forces. In either case, all costs incurred by the city shall be reimbursed from the bond or other funds being held. In the event the owner or his agent has during the two-year period, sold all or a portion of the real estate subject to the agreement, the original owner or his agent shall continue to be responsible for all measures required by the agreement and for all trees in open space including those located in common areas and on individual fee-simple lots. The original owner or his agent or the purchaser as the case may be shall take the measures, and repair or replace trees as required by the arborist. If the new owner of a single-family residential property refuses to permit the original owner or the arborist to make the required protective measures, inspections, repairs, or replacements, the original owner shall be considered as having complied with this section.

(Ord. No. 811; Ord. No. 953; Ord. No. 1042, 3-28-83; Ord. No. 1236, 9-13-88; Ord. No. 1659, 10-25-99)

Sec. 35-16. Failure to comply with plan.

If the city arborist determines that the permit holder has failed to comply with the plan, the city arborist shall immediately serve upon the permit holder a notice to comply which shall be sent by registered or certified mail to the address specified by the permit holder in his permit application. Such notice shall set forth specifically the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to revocation of the permit and the cash bond may be used by the city at the direction of the city arborist to correct the noted deficiencies; furthermore, he could be deemed to be in violation of this article and upon conviction could be subject to the penalties provided by this article.

(Ord. No. 811)

Sec. 35-17. Exceptions; waiver of chapter.

(a) In the event that any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and require immediate

removal without delay, verbal authorization may be given by the arborist and the tree removed without obtaining a permit as herein required.

(b) During the period of an emergency, such as a tornado, ice storm, flood or any other act of nature, the requirements of this article may be waived by the city manager or his designee.

(Ord. No. 811)

Sec. 35-18. Replacement of trees destroyed in violation of chapter.

When trees are destroyed in violation of this article, replacement trees shall be required unless exemption is granted by the arborist. The size, species and quantity of these replacements shall be determined by the arborist based on the value of the trees removed as calculated by the latest formula published by the International Society of Arboriculture.

(Ord. No. 811)

Sec. 35-19. Appeals.

An appeal to the city manager may be taken by any person aggrieved by any decision of the city arborist relative to the administration of this chapter. An appeal shall be taken within ten (10) working days from the date of the issuance of the arborist's written order, by filing with the city arborist and the city manager a notice of appeal specifying the grounds thereof. The city arborist shall then transmit to the city manager the record upon which the appeal is based. All decisions by the city manager can be appealed to a court of record. The city manager shall solicit the opinion of the tree commission, hear the appeal, and render a decision within fifteen (15) working days of receipt of the notice of appeal. An appeal stays all compliance with the action being appealed, unless the city arborist certifies to the city manager that by reason of stated facts a stay would, in his opinion, cause imminent endangerment to life or property. In such cases, compliance shall not be stayed other than by a restraining order which may be granted by the city manager, or by a court of record, on application and on notice to the city arborist and on due cause shown.

(Ord. No. 1659, 10-25-99)